

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

ANGELICA PINO

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire

Kimmel &amp; Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

(215) 540-8888

## DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant \_\_\_\_\_

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	Citizen of Another State	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 4
					<input type="checkbox"/> 5
					<input type="checkbox"/> 6

Incorporated or Principal Place of Business In This State

Incorporated and Principal Place of Business In Another State

Foreign Nation

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 420 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending		<input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury		<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 12 USC 3410
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes
IMMIGRATION	FEDERAL TAX SUITS			
	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)		
	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
	<input type="checkbox"/> 465 Other Immigration Actions			

## V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify) \_\_\_\_\_  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C SECTION 1692Brief description of cause:  
Fair Debt Collection Practices Act

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S)

(See instructions):

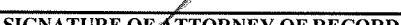
JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

Explanation: \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD



## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 9801 Canyon Gate Trail SW, Albuquerque NM 87121

Address of Defendant: 507 Prudential Rd. Horsham PA 19044

Place of Accident, Incident or Transaction: \_\_\_\_\_

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes  No

Does this case involve multidistrict litigation possibilities?

Yes  No

*RELATED CASE, IF ANY:*

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1.  Indemnity Contract, Marine Contract, and All Other Contracts

B. *Diversity Jurisdiction Cases:*

1.  Insurance Contract and Other Contracts

2.  FELA

2.  Airplane Personal Injury

3.  Jones Act-Personal Injury

3.  Assault, Defamation

4.  Antitrust

4.  Marine Personal Injury

5.  Patent

5.  Motor Vehicle Personal Injury

6.  Labor-Management Relations

6.  Other Personal Injury (Please

7.  Civil Rights

specify)

8.  Habeas Corpus

7.  Products Liability

9.  Securities Act(s) Cases

8.  Products Liability — Asbestos

10.  Social Security Review Cases

9.  All other Diversity Cases

(Please specify)

11.  All other Federal Question Cases

*15 U.S.C. § 1692*

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 03/05/12

\_\_\_\_\_  
Attorney-at-Law

57100

\_\_\_\_\_  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 03/05/12

\_\_\_\_\_  
Attorney-at-Law

57100

\_\_\_\_\_  
Attorney I.D.#

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Angelica Pino : CIVIL ACTION  
v. :  
NCU Financial Systems, Inc. : NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. (X)

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )

(f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

03/05/12  
Date

215 540 8888

Telephone

Craig Thorkimmel  
Attorney-at-law

817-788-2804

FAX Number

Angelica Pino  
Attorney for

KimmelfCreditLaw.com

E-Mail Address

**UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

ANGELICA PINO, )  
Plaintiff )  
v. )  
NCO FINANCIAL SYSTEMS, INC., )  
Defendant )  
Case No.: )  
COMPLAINT AND DEMAND FOR )  
JURY TRIAL )  
(Unlawful Debt Collection Practices)

**COMPLAINT**

ANGELICA PINO (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. (“Defendant”):

## INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

## **JURISDICTION AND VENUE**

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant has its corporate headquarters in the Commonwealth of Pennsylvania and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

## PARTIES

5. Plaintiff is a natural person residing in Albuquerque, New Mexico 87121.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. Defendant is a national debt collection company with its corporate headquarters at 507 Prudential Road, Horsham, Pennsylvania 19044.

8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## FACTUAL ALLEGATIONS

10. Beginning in September 2011, and continuing through January 2012, Defendant and others it retained constantly and continuously placed harassing and abusive collection calls to Plaintiff seeking and demanding payment for an alleged consumer debt.

15. Upon information and belief, the alleged debt Defendant was seeking to collect arose out of transactions, which were primarily for personal, family, or household purposes.

16. Defendant, its employees and servants harassed Plaintiff by making continuous calls to her cellular and work telephone numbers.

11. Plaintiff received collection calls from the following phone number: (888) 289-0907, which the undersigned has confirmed is a telephone number belonging to Defendant.

12. Defendant contacted Plaintiff, on average, at least two (2) times a day, sometimes calling her as frequently as four (4) times a day.

13. When Defendant's continuous and repetitive calls did not cause Plaintiff to make payment on the alleged debt, beginning in November 2011, Defendant started contacting

1 Plaintiff at times when it was inconvenient for her, specifically calling her on her cellular  
2 telephone as early as 7:00 a.m.

3       14.     Most recently, on January 16, 2012, Defendant contacted Plaintiff seeking and  
4 demanding payment of an alleged debt.

5       15.     Further, in its attempts to collect a debt, in September 2011, Defendant contacted  
6 Plaintiff's place of employment and advised her co-workers that they were looking for Plaintiff  
7 in order to serve her with an Order, which would be soon served on Plaintiff by the Sheriff's  
8 Department.

9       16.     Plaintiff did not give Defendant permission to disclose any information about the  
10 alleged debt to any third party, including her co-workers.

12       17.     It was embarrassing and humiliating for Plaintiff to have her co-workers learn  
13 that she was involved in a matter where a company was having her served with legal process by  
14 the Sheriff's Department.

15       18.     Further, at the time Defendant claimed that it would be serving her with an  
16 Order, Defendant had not obtained any court order and did not intend to serve her with any court  
17 order.

18       19.     Upon information and belief, Defendant deceptively made these statements in  
19 order to embarrass and humiliate Plaintiff and to make her believe that there was some urgency  
20 to make payment.

22       20.     Then, in January 2012, Plaintiff spoke with Defendant and informed Defendant  
23 to stop contacting her on her cellular telephone and at her place of employment.

24       21.     Defendant deceptively informed Plaintiff, "No, they have a right to call [her]."

25       22.     In response, Plaintiff terminated the call; however, Defendant immediately called

1 her back, with the intent of harassing Plaintiff, as it was aware that Plaintiff did not want to  
2 receive its collection calls.

3 23. Also, in January 2012, Defendant again threatened Plaintiff that they had an  
4 order that they would be serving on her.

5 24. To date, neither Defendant nor the Sheriff's Department has served Plaintiff with  
6 any court order or any legal process.

7 25. Finally, within five (5) days of its initial communication with Plaintiff, Defendant  
8 failed to send Plaintiff written notification informing her of her rights to dispute the debt and/or  
9 request verification of the debt, as well as providing her with the name of the entity to whom the  
10 debt is owed.

12 26. Defendant's actions in collecting the alleged debt were harassing, abusive, an  
13 invasion of privacy, and in violation of the Fair Debt Collection Practices Act.

#### 14 CONSTRUCTION OF LAW

15 27. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
16 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer  
17 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.  
18 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
19 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status  
20 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

22 28. The FDCPA is a remedial statute, and therefore must be construed liberally in  
23 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
24 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
25 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the

Truth in Lending Act (TILA) 15 U.S.C. §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

29. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

**COUNT I**  
**DEFENDANT VIOLATED THE**  
**FAIR DEBT COLLECTION PRACTICES ACT**

30. In its actions to collect a debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated the FDCPA generally;
- b. Defendant violated §1692c(a)(1) of the FDCPA when it communicated with Plaintiff at a time or place that it knew or should have known was inconvenient, specially communicating with Plaintiff before 8:00 a.m.;
- c. Defendant violated §1692c(b) of the FDCPA by communicating with another

1 person about a debt allegedly owed by Plaintiff;

2 d. Defendant violated §1692d of the FDCPA when it harassed, oppressed or  
3 abused Plaintiff in connection with the collection of a debt;

4 e. Defendant violated §1692d(5) of the FDCPA when caused Plaintiff's phone to  
5 ring repeatedly or continuously with the intent to annoy, abuse, or harass  
6 Plaintiff;

7 f. Defendant violated §1692e of the FDCPA by using false, deceptive or  
8 misleading representations or means in connection with the collection of a  
9 debt;

10 g. Defendant violated §1692e(5) of the FDCPA by threatening to take an action  
11 that cannot be legally taken or that is not intended to be taken;

12 h. Defendant violated §1692f of the FDCPA when it used unfair and  
13 unconscionable means in connection with the collection of a debt;

14 i. Defendant violated §1692g(a) of the FDCPA by failing to send, within five  
15 days of its initial communication with her, to Plaintiff written notification  
16 informing Plaintiff of her rights to dispute the debt and/or request verification  
17 of the debt, as well as informing her of the amount of the debt and to whom  
18 the debt was owed.

20 WHEREFORE, Plaintiff, ANGELICA PINO, respectfully prays for a judgment as  
21 follows:

22 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);  
23 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to  
24 15 U.S.C. § 1692k(a)(2)(A);

- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, ANGELICA PINO, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

By: \_\_\_\_\_  
Craig Thor Kimmel  
Attorney ID No. 57100  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
Phone: (215) 540-8888  
Fax: (877) 788-2864  
Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)

Date: 03/05/12